



DAC

SHAL.

#23 1/2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

GILBERT P. HYATT

Serial No. 08/464,034

Docket No. 751

Filed: June 5, 1995

For: IMPROVED IMAGE PROCESSING
ARCHITECTURE

Group Art Unit: 2616

RECEIVED
OCT 27 1997
OFFICE OF PETITIONS
AND APPEALS

REQUEST FOR RECONSIDERATION AND/OR

PETITION UNDER 37 CFR 1.144/1.181

FOR WITHDRAWAL OF AN IMPROPER RESTRICTION REQUIREMENT

Hon. Assistant Commissioner
For Patents
Washington, D.C. 20231

Sir:

The Applicant respectfully requests reconsideration and/or petitions for intervention of the Commissioner to withdraw an improper restriction requirement and to direct the Examiner to generate an action directed to all of the claims presented for examination under 37 CFR 1.129(a).

This Request/Petition is timely filed. It is filed in response to a **Final** Action and is filed within **two months** of the August 25, 1997 date of the Final Action.

TABLE OF CONTENTS

- I BACKGROUND
- II SUMMARY
- III THE FILING OF FOCUSED CLAIMS WAS IN RESPONSE TO
DIRECTION FROM GROUP DIRECTOR GODICI
- IV THE RESTRICTION REQUIREMENT IS INEQUITABLE AND
VIOLATES THE APPLICANT'S RIGHT TO DUE PROCESS
- V THE EXAMINER IS JUDICIALLY ESTOPPED FROM MAKING
THE INSTANT RESTRICTION REQUIREMENT
- VI THE EXAMINER TOTALLY IGNORED THE PTO REQUIREMENT
TO ESTABLISH WHETHER THERE IS A "SERIOUS BURDEN"
- VII THE EXAMINER TOTALLY IGNORED THE PTO REQUIREMENT
TO ADDRESS LINKING CLAIMS
- VIII THE EXAMINER TOTALLY IGNORED THE STATUTORY REQUIREMENT
TO ADDRESS INDEPENDENCE OF THE CLAIMS
- IX THE EXAMINER TOTALLY IGNORED THE PTO DEFINITION AND
THE PLAIN MEANING OF COMBINATION AND SUBCOMBINATION
- X THE ALLEGATIONS REGARDING COMBINATIONS AND
SUBCOMBINATIONS VIOLATE THE PTO REQUIREMENTS
- XI THE EXAMINER'S ATTEMPT TO ESTABLISH DISTINCTNESS
IS FATALY DEFECTIVE
- XII THE CLASSIFICATIONS ARE FATALY DEFECTIVE
- XIII THE RESTRICTION REQUIREMENT FAILS TO ESTABLISH
A PRIMA FACIE CASE
- XIV RELIEF REQUESTED

I BACKGROUND

The Applicant filed an amendment under 37 CFR 1.129(a) focusing the claims on a particular invention in accordance with direction given by Group Director Godici (now acting Deputy Assistant Commissioner For Patents). This direction was confirmed by SPE Razavi. See Section III. The Examiner disregarded this direction and generated an improper and erroneous restriction requirement in the form of a final first action.

II SUMMARY

The restriction requirement violates the requirements of the PTO. The Examiner must satisfy two requirements. The first is that there is a "serious burden" to the examiner and the second is that the claims are independent or distinct (MPEP 803). The Examiner has never even addressed the "serious burden" requirement. Hence, **for this reason alone the restriction requirement must fall**. Further, the Examiner has never addressed the independence requirement. The Examiner did comment on distinctness, but the distinctness comments are based upon improper unsupported conclusionary statements that are erroneous on their face. For example, the classifications are inconsistent and erroneous, the statements are unsupported and conclusionary and do not apply to the facts of the present case, and the Examiner misunderstands the PTO position on combinations and subcombinations. Hence, the restriction requirement does not even come close to satisfying any one of the PTO requirements.

Further, as discussed in detail below, the Examiner fails to establish a **prima facie** case; the restriction requirement is estopped by the law of the Supreme Court, by the law of the Federal Circuit, and by PTO policies; the restriction requirement violates the Applicant's Constitutional right to due process; and the restriction requirement violates fundamental equitable principals.

This request/petition incorporates by reference a petition filed in the instant application substantially contemporaneously herewith entitled PETITION UNDER 37 CFR 1.181(A)(3) FOR WITHDRAWAL OF AN IMPROPER CONSTRUCTIVE NONELECTION FOR CLAIMS RECITING SUBJECT MATTER THAT WAS PREVIOUSLY EXAMINED REGARDING AMENDMENTS FILED UNDER 37 CFR 1.129(A). This petition addresses in more detail the impropriety of the constructive nonelection, which supplements the instant request/petition which more particularly addresses the impropriety of the constructive election and the withdrawal of Group II claims from consideration.

III THE FILING OF FOCUSED CLAIMS WAS IN RESPONSE TO
DIRECTION FROM GROUP DIRECTOR GODICI

The filing of focused claims was in response to direction from Group Director Godici. It is improper for the Examiner to interfere with the Applicant's compliance with direction from the Group Director.

The Group Director met with the Applicant on October 24, 1995. The Applicant was asked to file amendments that better focused the claims on a different invention in each application in order to simplify examination and the Applicant agreed¹.

SPE Razavi made a similar suggestion. See the Telephone Conference Record attached hereto as Exhibit-1.

1. The Examiner was informed of the direction given by Group Director Godici in the Amendment under 37 CFR 1.129(a).

IV THE RESTRICTION REQUIREMENT IS INEQUITABLE AND VIOLATES THE APPLICANT'S RIGHT TO DUE PROCESS

The Applicant was directed by Group Director Godici to focus the claims (Section III). The Applicant filed an amendment under 37 CFR 1.129(a) in accordance with Group Director Godici's direction and the Applicant paid significant fees for examination of the focused claims. This entitled the Applicant to have the focused claims examined. The Examiner must examine the focused claims when he accepts the fee payment. The Examiner must examine the focused claims that were directed by his Group Director. The Examiner must examine the focused claims in accordance with 37 CFR 1.129(a) which is the equivalent of a File Wrapper Continuation. It is inequitable to take the Applicant's fee and then to refuse to examine the claims paid for by that fee.

The Examiner's position violates the Appellant's right to due process guaranteed by the Fifth Amendment to the U.S. Constitution. The PTO cannot override the Constitutional requirements of due process. Patlex Corp. v. Mossinghoff, 771 F.2d 480, 226 USPQ 985 (Fed. Cir. 1985); Patlex Corp. v. Mossinghoff, 758 F.2d 594, 225 USPQ 243 (Fed. Cir. 1985).

The instant application qualifies for transitional rights under 37 CFR 1.129(a) and 37 CFR 1.129(b). The Examiner acknowledged that the instant application qualifies for the transitional 37 CFR 1.129(a) (Final Action at para. 1) **but the Final Action is silent on 37 CFR 1.129(b)**. The Applicant's right to due process regarding 37 CFR 1.129(a) is violated by denying the Applicant an opportunity to have the focused claims examined after accepting the significant fee under 37 CFR 1.129(a). The Applicant's right to due process regarding 37 CFR 1.129(b) is violated by totally ignoring 37 CFR 1.129(b) and by withdrawing the focused claims without providing the Applicant an opportunity to have the focused claims examined in accordance with 37 CFR 1.129(b).

V THE EXAMINER IS JUDICIALLY ESTOPPED FROM MAKING
 THE INSTANT RESTRICTION REQUIREMENT

The Examiner is judicially estopped from making the instant restriction requirement. Judicial estoppel is an equitable principle that holds a party to a position on which it has prevailed, as against later litigation arising from the same events. Eagle Foundation Inc. v. Dole, 813 F.2d 798, 810 (7th Cir. 1987). By analogy, the Examiner here is estopped from restricting the claims in light of the examination of the claims of the original application.

"Where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position."

Davis v. Wakelee, 156 U.S. 680, 689 (1895). See also U.S. Philips v. Sears Roebuck & Co., 55 F.3d 592, 596, 34 USPQ2d 1699, 1703 (Fed. Cir. 1995).

As the Federal Circuit explained in Sears, judicial estoppel is designed to preserve the integrity of the judicial process by "protecting against litigants who 'play fast and loose with the courts.'" *id* at 1703. The Examiner's restriction and withdrawal of focused claims in direct contravention of Group Director Godici's direction (Section III), of claims directed to an examined species (see the referenced petition), and of focused claims after examining of claims of significantly broader scope (Section VI) is playing fast and loose with the law and with the PTO guidelines under which he is required to operate.

The Examiner recognizes that the Group I claims are directed to the same invention as the Group II claims, but uses unsupported conclusionary arguments to attempt to create a reason for restriction where none exists. See Sections VII and X to XII.

The Examiner previously examined various different inventions in the present application, yet now refuses to examine a single focused invention without restriction.

The Applicant paid significant fees for the amendment under 37 CFR 1.129(a) and for the focused claims with the expectation that the focused claims would be examined. It is playing "fast and loose" to charge fees for examination of focused claims, to refuse to examine the focused claims, and to cut off prosecution with a final first action.

In response to Group Director Godici's direction, the Applicant filed an amendment under 37 CFR 1.129(a) to focus the claims on a single invention. The Examiner's flip-flop, from examining broad claims directed to different types of systems to restricting narrower claims directed to a single invention, is in direct contravention of the Group Director's direction and should not be tolerated. The Examiner, having examined broad claims directed to many different systems and having been informed about the direction of his Director cannot now restrict and withdraw the focused claims.

Group II subject matter was previously examined. See the referenced petition (Section II). The Group II claims were proposed in response to the direction of Group Director Godici. The Examiner's flip-flop, from examining broad claims directed to many different features to alleging a constructive nonelection of **previously examined** subject matter, is judicially estopped. The Examiner, having examined Group II subject matter, cannot now claim that this subject matter is constructively nonelected.

VI THE EXAMINER TOTALLY IGNORED THE PTO REQUIREMENT
TO ESTABLISH WHETHER THERE IS A "SERIOUS BURDEN"

All of the claims must be examined on the merits because there is no "serious burden" on the examiner. Further, any allegation of a burden would have to address the direction of the Group Director (Section III), the equitable and due process issues (Section IV), and the estoppel issues (Section V). For example, it would be highly inequitable to accept the substantial fees paid by the Applicant for examination and then to allege that examination is too much of a burden.

The MPEP **requires** that there be a serious burden on the Examiner in order to restrict the claims, but (a) the Examiner has totally ignored this requirement and (b) there is **no serious burden** on the Examiner in the present case.

"803 Restriction -- When Proper

* * *

If the search and examination of an entire application can be made without serious burden, the examiner **must** examine it on the merits, even though it includes claims to distinct or independent inventions."
[emphasis added] (MPEP 803)

However, the Examiner ignored this requirement. This is not surprising, examination of the instant claims would **not** present any burden, certainly not a "serious burden" infra.

There can be no burden regarding examination of all of the claims in the present case because the Examiner has already examined the instant invention. See the contemporaneously filed petition that is incorporated by reference (Section II).

The Examiner appears to have the mistaken belief that restriction can be required between similar claims for the sole reason that some claims are more narrowly drawn than others. However, this violates the PTO requirements since examination of broader claims cannot be a burden when narrower claims of a similar type are being examined. Without a serious burden to the examiner, **restriction is prohibited**.

The Examiner never asserted that there is a serious burden if the claims are examined together and nothing in the record reflects that there is a serious burden. Quite the contrary, the record as a whole reflects that there would be no burden since the claims are focused on **previously examined subject matter**.

VII THE EXAMINER TOTALLY IGNORED THE PTO REQUIREMENT
TO ADDRESS LINKING CLAIMS

Claims 282 and 283 are linking claims which **must** be examined with the elected invention. However, the Examiner totally ignored these linking claims in violation of MPEP 809. Hence, the restriction requirement is fatally defective.

"The linking claims **must** be examined with the invention elected, and should any linking claim be allowed, rejoinder of the divided inventions must be permitted." [emphasis added] (MPEP 809)

Claims 282 and 283 recite the limitations of both, the Group I claims and the Group II claims. Hence, claims 282 and 283 are linking claims, which must be examined.

'There are a number of situations which arise in which an application has claims to two or more properly divisible inventions ... but presented in the same case are one or more claims (generally called "linking" claims) inseparable therefrom and thus linking together the inventions otherwise divisible.' (MPEP 809.03)

Further, the Examiner improperly ignored the procedure required by the MPEP.

"A letter including **only** a restriction requirement or a telephone requirement to restrict ... will be effective, specifying which claims are considered linking." [emphasis added] (MPEP 809)

However, the Action was a final first Action on the merits. It was far from the required "**only** a restriction requirement" [emphasis added]. Hence, the restriction requirement and the Final Action violate the MPEP and must be withdrawn.

VIII THE EXAMINER TOTALLY IGNORED THE STATUTORY REQUIREMENT
TO ADDRESS INDEPENDENCE OF THE CLAIMS

35 USC 121 states:

"35 U.S.C. 121 Divisional applications.

If two or more **independent** and distinct inventions are claimed in one application, the Commissioner may require the application to be restricted to one of the inventions."

There can be no question that the Examiner must address both, independence and distinctness. However, the Examiner has ignored the requirement to address independence of the claims. This is improper. The Applicant has a right to a determination of "independent and distinct" as required by 35 USC 121.

IX THE EXAMINER TOTALLY IGNORED THE PTO DEFINITION AND
THE PLAIN MEANING OF COMBINATION AND SUBCOMBINATION

The PTO is very specific about the meaning of combination and subcombination terminology, but the Examiner totally ignores the PTO definitions. The PTO defines:

"805.06(a) Combination and Subcombination or Element

A combination is an organization of which a subcombination or element is a part."

(MPEP 805.06(a))

Hence, a subcombination is an element or a part of a combination. **This is contrary to the Examiner's position.** The Examiner alleges that Group I and Group II are related as subcombinations disclosed as usable together in a single combination (Final Action at para. 3). This statement is not otherwise explained. However, the Examiner has never even attempted to show that the claims have the necessary combination/subcombination relationship. This is not surprising because the claims do not have a combination/subcombination relationship, as established in Sections IX and XII and as further discussed below. The Examiner merely relies on unsupported conclusionary statements without making the required showing.

The Examiner has not shown any combination/subcombination relationship between the groups of claims. Group II claims do not recite elements or parts of Group I claims. A simple comparison of Group I claim 95 and Group II claim 149 will show that the restriction requirement violates the clear definition of combination/subcombination supra.

The combination/subcombination **error** in identifying and classifying claims by itself overcomes the restriction requirement.

X THE ALLEGATIONS REGARDING COMBINATIONS AND SUBCOMBINATIONS VIOLATE THE PTO REQUIREMENTS

The restriction requirement is based upon an allegation of a combination/subcombination relationship between the claims, but the position is fatally defective. The PTO requires:

"Examiners **must** provide reasons and/or examples to support conclusions..." [emphasis added] (MPEP 803)

However, the restriction requirement is based entirely on unsupported conclusionary statements that are uninformative and erroneous. See Section XII for a discussion of the classifications contradicting the allegations of combinations and subcombinations.

The Examiner labels the claim groupings as combinations and subcombinations, but the Examiner does not provide any support for these labels. The Examiner's labels are contradicted by the classifications (Section XII). The Examiner then uses the unsupported conclusionary statement about combinations and subcombinations **as if it were fact** to support other allegations. This is improper.

Based upon the unsupported conclusionary allegation of combinations and subcombinations, the Examiner alleges that one claim does not require the particulars of another claim and that different claim features have separate utility. This is a patent cliché that is neither informative nor meaningful. This is

circular reasoning -- that differences between claims are differences and that different claims can be used differently. This statement is meaningless -- there can be no question that different claims have different uses, **even a single claim has different uses**. This statement is not sensible, it does not support an allegation of distinctness. This statement is inconsistent with PTO policy -- claims in an application must be different (37 CFR 1.75(b)). Hence, an allegation that different claims have some differences does not provide a basis for restriction.

XI THE EXAMINER'S ATTEMPT TO ESTABLISH DISTINCTNESS
IS FATALY DEFECTIVE

The restriction requirement is improper because it does not establish that the inventions are distinct. The Action merely makes unsupported conclusionary statements regarding "distinctness". The classifications are inconsistent with the plain terminology of the claims (Section XII), thus further confusing the restriction requirement.

The Action does not give any reasonable guidance as to why the claims are alleged to be distinct. The arguments are self serving and circular.

Further, the Action argues combinations and subcombinations, but this argument is also based upon unsupported conclusionary statements that are circular, noninformative, and plain wrong (Section IX).

Regarding combinations and subcombinations, the PTO requires an examiner to demonstrate two-way distinctness.

"In order to establish that combination and subcombination inventions are distinct, **two-way** distinctness **must be demonstrated**." [emphasis added] (MPEP 806.05(c))

However, the Examiner has not even "demonstrated" one-way distinctness, relying only on unsupported conclusionary statements, and the Examiner certainly has not "demonstrated"

two-way distinctness. Unsupported conclusionary statements do not constitute a **demonstration**.

The PTO requires a **showing** for **patentability**.

"If it can be **shown** that a combination, as claimed (1) does not require the particulars of the subcombination as claimed **for patentability** (to show novelty and nonobviousness) ..." [emphasis added] (MPEP 806.05(c))

However, the Examiner has not provided any "showing", only unsupported conclusionary statements, and the Examiner has certainly not provided a showing "for patentability".² In view of the rejections of the Group I claims, the Examiner would not be able to support an allegation that "the particulars of the subcombination" are not required for patentability.³

The burden is shifted to the Examiner because the utility argument is just plain wrong, as discussed below.

"If applicant proves or provides an argument supported by facts, that the other utility, suggested by the examiner, cannot be accomplished, the burden shifts to the examiner to document a viable separate utility or withdraw the requirement." [emphasis added] (MPEP 806.05(c))

The Examiner makes unsupported conclusionary statements that the inventions "have acquired a separate status in the art" and have "recognized divergent subject matter" (Final Action at para. 4). However, the Final Action has not specifically addressed these issues, certainly not why these issues apply to these two groupings of claims. These unsupported statements have little meaning in terms of establishing a prima facie case. For example, what divergent subject matter is the Examiner referring to.

2. MPEP 806.02 cannot be applied to this distinctness criteria, else this criteria would not make sense.

3. The Applicant has traversed the rejections in the record.

The Action falls far short of establishing two-way distinctness and of providing reasons for insisting on restriction with the unsupported conclusionary and erroneous statements presented on this record.

XII THE CLASSIFICATIONS ARE FATALLY DEFECTIVE

The restriction requirement is fatally defective because the claims are misclassified, the classifications are erroneous, and the classifications violate the PTO requirements. The Examiner has not even attempted to reconcile or explain the erroneous classifications. Representative errors are discussed below.

The Group I claims are erroneously classified in Class 382/305. One reason that this classification is erroneous is that the terms in the classification are **not recited** in claims classified thereunder. For example, the Group I classification (Class 382/305) is for the following:

IMAGE TRANSFORMATION OR PREPROCESSING

.⁴Image storage or retrieval (382/305)⁵

but the Group I claims **do not recite** such terminology. For example, Group I claims 95, 96, and 97 **do not recite** "transformation", or "preprocessing", or "retrieval" terminology.

Another reason that this classification is erroneous is that Group I claims are alleged to be drawn to display control and image processing system (Final Action at para. 2), but Class 382/305 **does not recite** such terminology.

The Group II claims are erroneously classified in Class 382/299. One reason that this classification is erroneous is that the terms in the classification are **not recited** in claims classified thereunder. For example, the Group II classification (Class 382/299) is for the following:

IMAGE TRANSFORMATION OR PREPROCESSING

...Raising or lowering the image resolution (e.g., subpixel accuracy) (382/299)

4. The PTO Manual of Classification uses an outline format with the levels of indenture identified with leading (left hand) dots defining the level of indenture. For example:

FIRST
.Second
..Third

5. This is an abbreviated notation for the classification (class/subclass).

but **not one of the Group II claims** recite "image resolution" terminology.

Another reason that this classification is erroneous is that Group II claims are alleged to be drawn to spatial interpolation circuit, subpixel vector change circuit, resolution reduction circuit, transform processor, weight circuit, scaling, image vector communication link, anti-aliased weight, and communication link (Final Action at para. 2), but Class 382/299 **does not recite** such terminology.

Another reason that this classification is erroneous is that Group II claims are alleged to be drawn to spatial interpolation circuit and subpixel vector change circuit (Final Action at para. 2), but claims classified in Group II (e.g., claims 141 and 142) do not recite spatial interpolation circuit terminology and claims classified in Group II (e.g., claims 145 and 146) do not recite subpixel vector change circuit terminology.

The Group I claims and the Group II claims are further misclassified because the classifications contradict the allegations of combinations and subcombinations (as analyzed in Section X). For example, the Examiner has never established why the Group I and Group II classifications supra have a combination and subcombination relationship. The plain meaning of the classification terminology supra establishes that the Group I claims and the Group II claims **do not have** a combination/subcombination relationship. For example, the Group I classification:

.Image storage or retrieval (382/305)

prima facie does not have a combination/subcombination relationship with the Group II classification:

...Raising or lowering the image resolution (e.g.,
subpixel accuracy) (382/299)

as alleged by the Examiner (Final Action at para. 3).

XIII THE RESTRICTION REQUIREMENT FAILS TO ESTABLISH

A PRIMA FACIE CASE

The restriction requirement does not approach the specificity required to establish a prima facie case of restriction and to inform the Appellant of the nature of the restriction requirement as required by 35 U.S.C. 121; 37 CFR 1.142; and 35 USC 132.⁶

Various examples of the non-specific and uninformative nature of the instant rejections are as follows.

a. The restriction requirement improperly disregards the express direction of Group Director Godici which guided the Applicant's amendment (Section III).

b. The Examiner is judicially estopped from making the instant restriction requirement (Section V).

c. The Examiner is estopped by PTO policy from making the instant restriction requirement (Section X).

d. The Examiner improperly ignored the linking claims (Section VII).

e. The Examiner improperly ignored the requirement of 35 USC 121 (Section VIII).

f. The Examiner improperly ignored the PTO requirement regarding a "serious burden" (Section VI).

g. The restriction requirement ignores the PTO requirement for examining all of the instant claims because of the lack of a "serious burden" to the Examiner (Section VI).

h. The restriction requirement is improperly based upon unsupported conclusionary statements supra.

i. The restriction requirement violates the Applicant's Constitutional right to due process by denying

6. See also 37 CFR 1.106(b); Chester v. Miller, 906 F.2d 1574, 1578, 15 USPQ2d 1333, 1337 (Fed. Cir. 1990) ("Section 132 is violated when a rejection is so uninformative that it prevents the applicant from recognizing and seeking to counter the grounds for rejection."). See also In re Oetiker, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992).

the Applicant his rights under 37 CFR 1.129(a) and 37 CFR 1.129(b) (Section IV).

j. The classification of claims is inconsistent and erroneous (Section XII).

k. The restriction requirement is grossly inconsistent, restricting and withdrawing a previously examined invention while 12 different system inventions were previously examined without restriction (Section V).

l. The restriction requirement fails to address individual claims, relying instead on general statements regarding groups of claims.

The burden of establishing a prima facie case rests with the examiner. This burden is not satisfied by a mere classification of the subject matter and some unsupported conclusionary statement regarding combinations and subcombinations (Sections X and XII). Hence, the restriction requirement cannot stand. Further, there are significant errors in the classification (Section XII).

The Examiner is estopped, based upon PTO policy, from restricting the claims as proposed. After having already examined claims directed to the invention claimed in Group I and Group II and after have examined broader claims in 12 different systems (Table-1), the Examiner cannot now make a restriction requirement and allege constructive nonelection of species within or embraced by the broader previously examined claims.

The Examiner must support the restriction requirement with a proper explanation and must provide acceptable evidence or reasoning. In re Piasecki, 745 F.2d 1468, 223 USPQ 785 (Fed. Cir. 1984). However, the Examiner bases the restriction requirement on erroneous, unsupported, conclusionary, and confusing statements; but does not provide a proper explanation and does not provide acceptable evidence or reasoning.

The Applicant, in the record, traversed the Examiner's unsupported and conclusionary statements and the Examiner's taking of notice, but the Examiner has not supported such statements with a reference or an affidavit in accordance with

MPEP 2144.03. Now, the Examiner requires restriction based upon additional unsupported and conclusionary statements, but the Examiner still has not complied with MPEP 2144.03. Further, these unsupported assertions are "in areas of esoteric technology" and hence should have been supported by a citation of a reference (MPEP 2144.03), but were not thusly supported.

Since the restriction requirement does not establish a prima facie case, the restriction requirement should be withdrawn. In re Oetiker, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992).

XIV RELIEF REQUESTED

The Applicant respectfully requests reconsideration and/or petitions for withdrawal of the improper restriction requirement and for an action directed to all of the claims presented for examination under 37 CFR 1.129(a).

Please charge any fees associated with the papers transmitted herewith to Deposit Account No. 08-3626. A Declaration claiming small entity status has been filed herein.

CERTIFICATION OF MAILING BY EXPRESS MAIL: I hereby certify that this correspondence is being deposited with the United States Postal Service with Express Mail post office to addressee service under 37 CFR 1.10, postage prepaid, in an envelope addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231 with the express mail label number EM302980238 on October 14, 1997.

Respectfully submitted,

Dated: October 14, 1997



Gilbert P. Hyatt
Registration No. 27,647
P.O. Box 81230
Las Vegas, NV 89180
Phone (702) 871-9899

EXHIBIT-1

TELEPHONE CONFERENCE RECORD

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of)	
GILBERT P. HYATT)	Group Art Unit: 2613
Serial No. 08/460,422 (Plus 16)	Examiner: Jon Chang
other)	
Docket No. 730 applications.)	
See Appendix))	
Filed: June 2, 1995)	
For: IMPROVED IMAGE PROCESSING)	
ARCHITECTURE)	

TELEPHONE CONFERENCE RECORD

Hon. Assistant Commissioner
For Patents
Washington, D.C. 20231

Sir:

This is a telephone conference record in 17 applications listed in Appendix-I attached hereto.

SPE Razavi telephoned the Applicant's representative, Vincent Turner, on April 30, 1997 to discuss the Decision On Petition dated April 16, 1997. The broad nature of the claims and the claiming of multiple inventions was discussed. The claiming of a line sync system, a topographical system, and a map system were particularly mentioned. SPE Razavi stated that examination would be simplified if the claims were focused. In particular, SPE Razavi suggested that the Applicant (1) focus — each application on a single invention; e.g., a topographical system rather than claims directed to many different systems and (2) indicate the basis in the specification for the particular claimed invention.

Dated: May 27, 1997

Respectfully submitted,

Vincent Turner
Vincent Turner

Registration No. 40,419
P.O. Box 36370
Las Vegas, NV 89133
Phone (702) 396-4670

APPENDIX-I

SUBJECT PATENT
APPLICATIONS

<u>DKT.</u>	<u>SERIAL</u>
<u>NO.</u>	<u>NO.</u>
702	08/458,143
708	08/457,211
711	08/457,208
713	08/458,004
715	08/456,901
718	08/457,194
719	08/457,197
721	08/456,592
723	08/457,196
726	08/458,791
730	08/460,422
734	08/461,567
737	08/460,612
741	08/464,999
743	08/461,288
747	08/464,007
748	08/464,998